

### **REMARKS**

Reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 1-13 and 22 remain pending. Claims 1, 4, 8, and 22 are amended. Claims 1, 8, and 22 are amended to more fully define over the applied references. Claim 4 is amended to conform to the claim language of claim 1 from which it depends. Claims 23-28 are added to secure an appropriate scope of protection to which applicants are believed entitled.

The rejection of claims 1-3, 5, 7, 8, 11-13, and 22 under 35 U.S.C. 101 as containing non-statutory matter is hereby traversed. With respect to the §101 non-statutory subject matter issue, the present claimed invention recites a useful, concrete, and tangible result within the technological arts. Specifically, claim 1 requires storing emotional orientation information of a consumer in a character profile record in a computer memory, determining a predominant tendency of the consumer toward an emotional orientation using a computer, and sorting the character profile record and determining an appropriate marketing campaign directed to the sorted character profile record using a computer. In so doing, the claimed invention transforms the collected emotional orientation information of the consumer stored in a character profile record to include a value indicative of the emotional orientation of the consumer and a predominant tendency of the consumer toward one of the individual emotional orientations.

The computer-implemented method as claimed in claim 1 optimally matches a marketing strategy to a potential consumer's personality profile. Collected emotional orientation information is stored in a personal character profile record in a database on a computer memory. The personal character profile record includes a series of values indicative of the emotional orientations of the consumer, where the value is one of a survival type, a growth type, a relaxation type, and a combination thereof. Based on the stored emotional orientation information in the personal character profile record in the database on the computer memory, a determination is made by computer of a predominant tendency of the consumer toward one of the following individual emotional orientations: survival type, growth type, relaxation type, and a combination thereof. The character profile record in the database on the computer memory is sorted by computer into at least three clusters, each cluster corresponding to a subset of character

profile records determined to have a predominant tendency toward one of the individual emotional orientations. Based on the predominant tendency toward one of the individual emotional orientations of the cluster of the character profile record of the potential consumer, a determination is made by computer of an appropriate marketing campaign directed to the specific cluster including the personal character profile record of the potential consumer having a particular emotional orientation. The determined appropriate marketing campaign is displayed to the potential consumer.

According to one embodiment, the analysis of the potential consumer's personality is performed using instructions executed by a computer, which measures the consumer's responses to a questionnaire in collecting the emotional orientation information and compares the responses to a databank of responses, and using a statistically-based procedure, matches the person to a specific profile. The marketing strategy best suited to the individual is physically displayed for the individual (using either a multi-media presentation such as a computer screen or a cellular phone, or any other type of physical display).

In another optional embodiment, a telephone network is optionally used. There is always a computer or a computer system involved in the information gathering step and in the analysis step, and the information is always compared to a database of emotional profiles.

As claimed, a computer is required for storing the emotional orientation information and including a value indicative of the emotional orientation of the consumer, determining a predominant tendency of the consumer toward one of the individual emotional orientations, sorting the character profile record in the database into at least three clusters, and determining an appropriate marketing campaign directed to the specific cluster including the personal character profile record of the potential consumer. That is, there is both a physical organization of the emotional orientation information on a computer memory to include an emotional orientation indicating value and processing of the stored information by a computer to determine a predominant tendency of the consumer, and sort the character profile record and determine an appropriate marketing campaign.

For any of the above reasons, the present claimed invention recites statutory subject matter and the rejection is respectfully requested to be withdrawn.

The rejection of claim 8 under 35 U.S.C. 112, second paragraph, is believed overcome in view of the foregoing amendment to claim 8 and the rejection is respectfully requested to be withdrawn.

The rejection of claims 1-13 and 22 under 35 U.S.C. 103(a) as being unpatentable over Refuah et al (PCT Application Publication WO 99/39281, hereinafter Refuah) in view of either reference U or reference V is hereby traversed. Refuah in view of references U or V, singly or in combination, fails to render obvious the claimed invention as none of the references describe either of: the three claimed personality orientations; and a link between an individual's initial emotional response and a resultant personality type.

With respect to the three claimed personality orientations, when a potential consumer views a particular advertisement for a product, they have an initial emotional response and are either attracted to or repulsed by the product. The emotional response is immediate (within 120-250 msec), and only later (after 1 sec) is a cognitive response determined by the consumer. The emotional response normally determines the action eventually taken with respect to whether the consumer purchases the product or not. Thus, the immediate attraction toward a product is a much better predictor of the final purchase response than the later produced cognitive response. Therefore, a marketing strategy based on a correct, immediate emotional response is more effective than a strategy based on a rational cognitive response as many times the cognitive response is indicative of the "front" a person would like to present to the world. These two responses are automatic, uncontrollable and subconscious. That is, the potential consumer can either act upon the responses to purchase the product or not, but the attraction or repulsion is unconscious.

Embodiments according to the present claimed invention rely on the finding that the initial emotional response of a potential consumer to an advertisement depends upon the consumer's personality. The inventor has divided the personality types ("character dispositions") into three types (as described on pages 9-11 of the instant application) including:

i) Survival orientation (described on page 10 of the instant application). The survival-oriented personality type has a "type A" personality, namely small problems appear large to the person, and he is constantly evaluating whether to "fight or flight". A strong

survival-oriented personality will "fight" more, while a personality having less survival tendency will opt for "flight."

ii) Relaxation, or homeostasis orientation (described on page 11 of the instant application). The relaxation-oriented personality type attempts to maintain the "status quo" and thus is reluctant to change his workplace, his hometown, etc. The relaxation-oriented personality is family-oriented and places his career second. The antithesis of the relaxation-oriented personality is one in constant motion thriving on adrenaline.

iii) Growth orientation (described on the lower half of page 10 bridging over to the upper half of page 11 of the instant application). The growth-oriented personality type is interested in experiencing new experiences, in learning, and in personality and intellectual development (e.g. culture, arts). The antithesis of this personality is someone who is clinically depressed (namely disinterested in life experiences).

The classification of the population according to these three emotional orientation types is novel and has not been previously described, nor has this classification been connected to sales and marketing before embodiments of the present invention. Additionally, the inventor has shown using empiric data that this classification results in superior results (as evident by sales) when a "tailor matched" marketing strategy is formulated and utilized.

The inventor measures different levels of each of these personality types in each individual, i.e., potential consumer, so that each individual profile is made up of a weighted (high, medium, low) combination of these personality types. This results in many more than three emotional orientations, and each personality type is described as having a personal character profile. For instance, in one example embodiment according to the present claimed invention, each individual is measured as having one of three levels of the three personality types. Because there are three base emotional orientations (survival/relaxation/growth), and three measured levels of intensity of each of these orientations, this results in  $3^3=27$  possible combinations, providing 27 options of possible personality profiles. See pages 8-9 of the instant application, which describe these blends of emotional orientations.

In the present invention, the computer-implemented method tailors a marketing strategy to the specific personality profile of the individual (to the complex blend of personality types that the individual possesses.) Up to 27 marketing strategies for a single computer software product have been created, each strategy suited for a specific personality profile.

Case studies have been performed according to the above-described method involving showing the marketing strategies to potential consumers. After matching the specific personality types of the potential consumers to a personality-tailored marketing strategy, resulting sales were 250% higher than the sales achieved using classical marketing strategies.

Further, research by the inventor has shown that specific personality profiles are attracted to specific products. For instance, survival-oriented individuals prefer bitter tastes, while growth-survival oriented individuals (a blended orientation) prefer bittersweet tastes. Growth-relaxation oriented individuals prefer sweet tastes. Survival oriented individuals prefer the color red, so red is used in advertisements intended for that personality profile. Specific words used in advertisements are attractive for one personality profile, and others are better suited to attract another personality profile.

Thus, an individual has a natural attraction to specific products. However, marketing strategies tailored to suit the particular consumer's personality profile attracts individuals to purchase products they would not otherwise have purchased.

The individual personality type is analyzed in one embodiment using a simple questionnaire. For instance, the inventor has used a questionnaire having 12 questions asking how the individual relates to his job, how he spends his leisure time, would he like to switch jobs, etc. The individual is limited in the time he is allowed for his response, so that the immediate "undoctored" emotional response is given (and not the cognitive response). When the individual's spouse was later asked to confirm or deny the inventor's personality analysis based on the individual's responses, the inventor was shown to have more than 80% success in the emotional orientation analysis.

With respect to the resultant personality types, none of the references describe the three personality orientations disclosed in the present application. Further, there is no mention of a link between an individual's initial emotional response to a stimuli, and to a resultant personality type.

Referring to the V reference, the citation revealingly states in the first line that "1/3 of shoppers classify themselves as emotional buyers." The reference then categorizes what tends to attract that third of the population, i.e., the self-described emotional buyers. In contrast, the present claimed invention pertains to the subconscious emotional process resulting in an initial emotional response occurring in each and every person, which is an automatic process uncontrolled by the person. The person cannot change his immediate like or dislike of a product

or of an advertisement as this is based on his inborn personality. One difference between the present claimed invention and the V reference is that the V reference is based on the individual's cognitive classification of himself instead of the immediate emotional response of the individual. As demonstrated by the inventor and as described above with respect to the instant application and invention, this is not the individual's true character, but rather the character he wishes to "present" to the world. The V reference states that the shoppers classify themselves and fails to describe, teach, or suggest the classification of an individual based on their initial non-cognitive response. Further, as stated by the reference, it is the individual who is performing the classification and not a determination by computer as claimed in the present claimed invention.

With respect to the personality categories described in both the V reference and the U reference, these are not equivalent to those of the present application, and the mere semantic similarity should not mislead the examiner. The "fun & excitement" categories described in references U and V appear to seek adrenaline-high activities, and this would be the opposite of the relaxation type described in the present application and claimed in claim 1 because individuals in this category constantly seek fun and activity, whereas the relaxation personality of the present application is most satisfied in his own home with the fewest of stimuli. The growth personality of the present application, which the examiner has mistakenly equated with the "fun & excitement" category, seeks intellectual, artistic, spiritual, experiences and culture, and not specifically adrenaline-high activities. Therefore, a person classified under "growth" according to the present invention is not necessarily a person who classifies himself as "fun & excitement."

The "family welfare, trust & safety" category is in no way similar to the "survival" personality of the present invention. The survival personality is a hot-blooded, highly emotional individual, who constantly feels his coping skills are insufficient, and that "life is hard." He is often an aggressive person basing his outlook on the "fight or flight" instinct. "Trust and safety" is not equivalent to a survival-oriented personality type and is frequently the total opposite.

Further, in the present application there are blends of these personality types, giving a wide spectrum of personality types, and there are many more than 3 personality types based on the combinations.

Based on any of the foregoing reasons, neither the U reference nor the V reference, teach or suggest the present invention as claimed in claim 1. For any of the above reasons, the present

claimed invention is patentable over the U reference and/or the V reference and the rejection should be withdrawn.

With reference to Refuah, Refuah describes gathering a great deal of highly irrelevant data, and analyzing the personality in an undisclosed manner from the gathered data. For instance, subjects of interest such as chess, checkers, etc. are considered relevant (see page 2, line 19); however, it is unrealistic to analyze such a large and varied quantity of information from an individual. Furthermore, according to Refuah the possible number of classifications is enormous and it is not practical to plan and carry out so many marketing strategies. In contrast, claim 1 recites determining the personality types based on the subconscious immediate emotional response of the individual. Most often, these immediate responses are determined using a questionnaire. The immediate subconscious emotional response is not influenced by the current (transient) mood described by Refuah, and the mood is of no relevance in the present claimed invention as the personality profile in the present invention is constant and characteristic of each individual. Refuah places emphasis on the fluctuating mood, and states the marketing strategy should be tailored to suit the mood as well as the persona (bottom of page 2 of Refuah). The present claimed invention concerns the persona alone. Further, and similar to the U reference and V reference described above, Refuah fails to describe the 3 personality orientations that are the basis of the present claimed invention, nor the relevance of the personality orientations to marketing.

For any of the above reasons, the present claimed invention is patentable over the Refuah reference and the rejection should be withdrawn.

As described above, the present claimed invention is directed at the immediate emotional response of the consumer and not to the secondary cognitive response as contemplated by Refuah and the U and V references. For at least this reason, the present claimed invention is patentable over the applied combination of references and the rejection is respectfully requested to be withdrawn.

Further there is no teaching, suggestion, or motivation in any of the references teaching, suggesting or motivating a person of ordinary skill in the art at the time of the present invention to combine the references. Nor has the Examiner presented a rationale teaching, suggesting, or motivating a person of ordinary skill in the art to combine the categories of the U and V references with Refuah.

Specifically, the Examiner has failed to identify why a person of ordinary skill would be motivated to combine the personality of Refuah with the categories of either the U reference or V reference. In the Final Action mailed May 5, 2004, the Examiner generally asserts that the applied references would be combined for the purpose of distinguishing categories, clusters, or emotional shopper designations for targeted advertising as providing motivation for the asserted combination of references. The Examiner is incorrect as there is no suggestion of the asserted combination in the applied references nor has the Examiner presented a rationale for the asserted combination.

A statement that modifications of the prior art to meet the claimed invention would have been well within the ordinary skill of the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references. See MPEP 2143.01 quoting Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). The Office Action merely stated that the references can be combined, which Appellants contend to the contrary, and does not state any desirability for making the modification. In other words, the Office Action failed to supply any objective reasons to combine the applied references.

In accordance with MPEP §2143.01 and Al-Site Corp. v. VSI Int'l Inc., 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999), the Examiner is requested to identify a teaching, suggestion, or motivation in either reference or to provide an affidavit of facts within the personal knowledge of the Examiner per MPEP §2144.03 providing a motivation or suggestion to one of ordinary skill in the art to make the argued combination. The Examiner has neither identified any teaching in Refuah or the U reference and V reference motivating or suggesting the asserted combination to a person of ordinary skill in the art nor provided an affidavit because there is no teaching to be found.

“When an obviousness determination is based on multiple prior art references, there must be a showing of some ‘teaching, suggestion, or reason’ to combine the references.” Winner International Royalty Corp. v. Wang, 53 USPQ2d 1580, 1586 (Fed. Cir. 2000). The Examiner has failed to make such a showing supporting the applied combination of references and therefore the applied combination of references is improper. The Examiner is in error for any of the above reasons and has not made out a prima facie case of obviousness, and the rejection of claim 1 is respectfully requested to be withdrawn.



All objections and rejections having been addressed, it is respectfully submitted that the present application should be in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,

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